

Decision 05-11-033 November 18, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service.	Rulemaking 95-04-043 (Filed April 26, 1995)
Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service.	Investigation 95-04-044 (Filed April 26, 1995)

ORDER DENYING REHEARING
OF DECISION (D.) 05-08-040

I. BACKGROUND

D.05-08-040 grants the petition for modification of D.00-09-073, filed by Cingular Wireless, Nextel of California, Inc. ABC California, Spring T-Mobile, Verizon Wireless, and Verizon California, Inc. (collectively referred to as the "Joint Parties"), on March 9, 2005. By D.00-09-073, the Commission adopted an "overlay" plan for the geographic split of the 310 Numbering Plan Area (NPA), to also include a new 424 area code. Under the new overlay plan, all calls within the 310/424 overlay region shall include a three-digit area code plus the seven-digit telephone number.¹ Thus, under the new overlay plan, all customers in the 310/424 overlay region will experience the loss of seven-digit dialing, even for calls within the same area code. (D.05-08-040 at 14.) Permissive use of the new dialing pattern in the 310 NPA begins on December 31, 2005 and mandatory use begins on July 26, 2006.

¹ The Federal Communication's Commission (FCC), requires mandatory 10-digit dialing for an overlay. (*In the Matter of Numbering Resource Optimization*, Second Report and Order, Appendix B, Section E, Paragraph No. 29, FCC CC Docket Nos. 96-98 and 99-200, adopted December 7, 2000; *Re Competition for Local Exchange Service* (2003) ___ Cal.P.U.C.3d ___, 230 P.U.R.4th 471, 2003 Cal.P.U.C. Lexis 655, *24, slip. op. D.03-11-022 (hereinafter referred to by its "D." number).)

In *Re Competition for Local Exchange Service* (1996) 70 Cal.P.U.C.2d 464, 467, slip. op. D.96-12-086 (hereinafter referred to by its “D.” number), and *Re Competition for Local Exchange Service* (1996) 67 Cal.P.U.C.2d 365, slip. op. D.96-08-028 (hereinafter referred to by its “D.” number), we discussed the background of the supply of available telephone numbers in North America, which is governed by the North American Numbering Plan (NANP) that prescribes the structure of telephone numbering codes. Telephone numbers throughout the United States utilize a 10-digit dialing format composed of a three-digit area code, a three-digit central office (NXX) code, and a four-digit line number. Area codes are assigned nationally for designated local NPA's by Bell Communications Research, Inc. (Bellcore) which currently serves as administrator of the NANP. (D.96-12-086, *supra*, 70 Cal.P.U.C.2d at p. 467.) Although wireless carriers and some landline carriers use a 10-digit protocol, in California, the incumbent local exchange carriers' (ILECs) network is currently configured to require the 1+ prefix be dialed preceding the 10 digits.

On August 3, 2005, after the draft decision (DD) was issued but prior to the adoption of a final decision (D.05-08-040), Douglas Carlson, a party in the underlying proceeding, filed a petition for modification of D.96-12-086, requesting the Commission consider whether 1+10-digit dialing pattern changes should be addressed through that petition. We agreed that the issue should be addressed through Mr. Carlson's petition for modification of D.96-12-086. (D.05-08-040 at 49, Conclusion of Law No. 12.) On August 15 and 22, 2005, The Telephone Connection of Los Angeles, Inc., and The Telephone Connection Local Service, LLC (collectively TCLA), jointly filed comments and reply comments, respectively, on the DD. TCLA presented policy arguments in its comments for modifying the DD to make the 1+10-digit requirement for landline carriers permissive and mandating a 10-

digit overlay plan.² In its reply comments on the DD, TCLA argued for the first time that wireline carriers would be at a competitive disadvantage if a 1+10-digit dialing requirement is implemented.

TCLA applied for rehearing of D.05-08-040 alleging that we erred by adopting a 1+10-digit dialing pattern in the region served by the 310 NPA. TCLA filed a concurrent motion requesting an order shortening time for responses to its application. That motion was denied by ALJ ruling on September 20, 2005. On September 26, 2006, TCLA filed a motion to reopen the proceeding for consideration of the 1+10 digit overlay dialing requirement.³ On September 28, 2005, Pacific Bell Telephone Company (PacBell) and Verizon California, Inc. (“Verizon”), filed a joint response to TCLA’s application for rehearing. On October 12, 2005, TCLA filed a motion to strike portions of PacBell’s and Verizon’s joint response, and PacBell and Verizon filed a response thereto on October 27, 2005.

II. DISCUSSION

TCLA argues that the Commission’s requirement of a 1+10-digit dialing for wireline carriers contradicts rules of the Federal Communications Commission (FCC) as well as Commission rules and decisions, and that by D.05-08-040 the Commission: 1) abused its discretionary power; 2) failed to proceed in a manner required by law; and 3) acted in excess of its power and jurisdiction in violation of Public Utilities Code section 1757, subdivisions (a)(1) and (a)(3). Further, TCLA contests the Commission’s rationale for imposing a “1” prior to the 10-digit dialing.

² The terms “wireline” and “landline” carrier are used synonymously for purposes of this proceeding.

³ Neither the Carlson petition for modification nor TCLA’s motion to reopen the evidentiary record are subjects of this order. Accordingly, today’s order is not intended to dispose of or prejudice the outcome of the petition for modification or TCLA’s September 26, 2005 motion.

In its application for rehearing, TCLA argues that the FCC prohibits the imposition of a “1” preceding a 10-digit telephone number when implementing an overlay. By order, the FCC requires that 10-digit dialing be required when implementing an overlay. (See *In the Matter of Numbering Resource Optimization*, Second Report and Order, Appendix B, Section E, Paragraph No. 29, FCC CC Docket Nos. 96-98 and 99-200, adopted December 7, 2000.) D.05-08-040 is consistent with the FCC’s requirement. The FCC does not prohibit the imposition of “1” before a 10-digit telephone number. Indeed, as TCLA readily acknowledges, California is not the only example of “1+” 10-digit dialing in the United States.

TCLA also argues that D.05-08-040 errs claiming that Commission decisions prohibit the imposition of a “1+” 10-digit dialing. Since the earliest Commission reviews of overlay plans versus geographic splits, we have routinely used the phrases “10-digit” and “1+10-digit” dialing interchangeably. (*AirTouch Communications v. Pacific Bell* (1995) 61 Cal.P.U.C.2d 153, 177, slip. op. D.95-08-052; see also, D.96-08-028, *supra*, 67 Cal.P.U.C.2d at pp. 371-372).) As we explained in D.96-08-028, *supra*:

In D.95-08-052, we concluded that for any overlay to be acceptable, all calls within the local calling area should be subject to dialing consistency whether customers subscribe to a CLC [i.e., competitive local carrier] or an LEC. We explained ... that under the national dialing plan established by the NANP, all calls between NPAs within the U.S. require the dialing of 11 digits, i.e., 1+area code+local number. Since a new overlay area code would be relatively underpopulated in comparison to the preexisting area code, these customers assigned to the new code would have to use 1+10-digit dialing more often than customers served by the old code since the majority of local numbers would be in the old area code. Further, since CLCs would be more dependent on the new area code for number assignments, this burden would fall more heavily on their customers. This result would be unduly discriminatory. *Accordingly, we found that mandatory 1+10-digit dialing for all local calls within the affected region should be required for an*

overlay relief plan in order to promote consistency in dialing patterns irrespective of the customer's area code.
(67 Cal.P.U.C.2d at pp. 372-373, emphasis added.)

Contrary to TCLA's assertion, we have never found that 1+10-digit dialing is prohibited. In addition, TCLA also argues that the imposition of a "1" preceding a 10-digit dialing scheme is a disparity between and among different classes of carriers. Further, TCLA claims that it is not a technologically and competitively neutral scheme. Specifically addressing the issue of dialing disparity, D.05-08-040 requires 10-digit dialing in the overlay area as required by FCC rules and Commission decisions. The challenged decision treats all wireline carriers similarly. D.05-08-040 provides:

Wireline customers and service providers in California are accustomed to, and have conformed with, the 1+10-digit dialing plan for any call to a different area code. With an overlay, wireline customers will still be required to dial the "1+" preceding the 10 digits, even within the same area code. To the extent that wireless customers currently do not dial the "1+" preceding 10-digit calls, they will continue in the same manner after the overlay takes effect. Thus, the overlay will simply continue area code dialing protocols that already exist with respect to wireline and wireless carriers. Given the impending exhaust of the 310 area code, consideration of the implications of a policy change from 1+10-digit to 10-digit only dialing, cannot reasonably be accomplished within the limited time available to implement the PEP for the 310 area code overlay.... (D.05-04-080 at 49.)

Although TCLA asserts that wireline carriers are at a competitive disadvantage under a 1+10-digit dialing requirement vis a vis wireless carriers, it provides no support for the proposition, and its declaration that customers provided with a choice between placing calls from wireless or wireline carriers "will likely favor the technology that allows them to dial the fewest digits possible" is speculative

at best, and among other things, does not take into account any differences between wireline services and wireless services.⁴

In addition, TCLA ignores the pending petition for modification filed by Mr. Carlson before we issued D.05-08-040. D.05-08-040 is very clear that we will consider the “dialing pattern changes relating to the “1+” prefix requirement for 10-digit dialing...through the [p]etition for [m]odification of D.96-12-086 submitted on August 3, 2005.” (D.05-08-040 at 55, Conclusion of Law No.12.) While TCLA asserts that Mr. Carlson’s petition concerns statewide policy on overlay dialing patterns, and not the 310 NPA exclusively, certainly the 310 area is included. TCLA argues that given the overlay implementation schedule, action on the dialing pattern changes relating to the “1+” prefix should be expedited; however, that is a policy matter, not a legal one. As TCLA’s petition and motion to strike portions of the PacBell/Verizon response to its application for rehearing make clear, the matter raises factual questions that were not raised in the Joint Parties’ petition to modify D.00-09-073, and not at issue prior to the comment phase leading to D.05-08-040, that are a subject of the Carlson petition for modification, and that require resolution prior to any changes in policy. TCLA has not established that the Commission has abused its discretionary power, failed to proceed in a manner required by law and/or acted in excess of its powers and jurisdiction, or otherwise erred in its decision to address this issue in our pending consideration of the Carlson petition for modification.

We have reviewed each and every allegation of error raised by TCLA and find no merit in any. Accordingly, the application for rehearing of D.05-08-040 and the motion to strike portions of the PacBell and Verizon response are hereby denied.

⁴ Commission Rules of Practice and Procedure, rule 86.1 cautions applicants for rehearing that vague assertions to the record or law without citation will be accorded little attention.

THEREFORE, IT IS ORDERED, that

1. The application for rehearing of Decision 05-08-040 filed jointly by The Telephone Connection of Los Angeles, Inc., and The Telephone Connection Local Service, LLC, is denied.

2. The motion by The Telephone Connection of Los Angeles, Inc., and The Telephone Connection Local Service, LLC, to strike portions of the joint response of Pacific Bell Telephone Company and Verizon California, Inc., to its application for rehearing is denied.

This order is effective today.

Dated November 18, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
SUSAN P. KENNEDY
JOHN A. BOHN
Commissioners